OFFICE OF PUBLIC INSTRUCTION
PO BOX 202501
HELENA MT 59620-2501
www.opi.state.mt.us
(406) 444-3095
(888) 231-9393
(406) 444-0169 (TTY)

Linda McCulloch
Superintendent

May 4, 2004

TO: District Superintendents and Clerk/Business Managers
Cooperative Directors and Clerks

FROM: Joan Anderson, Administrator
School Finance Division

RE: Retirement under SB 424– FAQs for FY 2004-05

This memo answers some common questions concerning implementation of SB 424 for FY 2004-05 and future years. OPI's earlier memo on SB 424, dated April 28, 2003, is still relevant and is posted at: http://www.opi.state.mt.us/FederalPrograms/SupplementNotSupplant.html

In this memo:
- Background
- "Salaries and Health-Related Benefits"
- Cooperatives and Medicaid
- Impact Aid
- Budgeting Suggestions

BACKGROUND

In the 2003 Legislative Session, SB 424 imposed limitations on the use of the school district retirement fund for the payment of the employer's costs of TRS, PERS, FICA and unemployment. Generally, the change requires that the costs of retirement benefits for federally-paid employees be paid using the federal source that pays their salaries as of FY 2004-05. For FY 2003-04, the federal retirement benefits paid using the retirement fund are limited to the amount paid in FY 2002-03.

MCA 20-9-501 states,
"(2)(a) The district or the cooperative shall pay the employer's contributions to the retirement, federal social security, and unemployment insurance systems from the retirement fund for the following:
(i) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from state or local funding sources;
(ii) a cooperative employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the cooperative's interlocal agreement fund if the fund is supported solely from districts' general funds and state special education allowable cost payments pursuant to 20-9-321; and
(iii) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the district's school food services fund provided for in 20-10-204.
(b) For an employee whose benefits are not paid from the retirement fund, the district or the

cooperative shall pay the employer's contributions to the retirement, federal social security, and unemployment insurance systems from the funding source that pays the employee's salary.

<u>“SALARIES AND HEALTH-RELATED BENEFITS”</u>

Q: Can a district use the retirement fund if they pay an employee’s salaries from the general fund and health insurance from federal funds?
A: No. Subsection (2)(a)(i) allows that when a person’s salary *and health-related benefits, if any*, are paid using state or local sources, then the retirement fund may be used. If health benefits are paid from federal sources, this section does not allow the retirement fund to be used.

Q: If an employee is paid partly using federal funds and partly using state and local funds, can the retirement fund pay a portion of the retirement costs?
A: Yes. The retirement fund can pay retirement costs proportional to the amount of salaries and health insurance benefits, if any, that are paid using state and local funds.

Q: Can a district use the retirement fund if they pay an employee’s salaries from federal funds and health insurance from general fund, school foods fund, or other state/local resources?
A: No. The law disallows use of the retirement fund for federally-paid employees. However, it does not restrict paying the health benefits for federally paid employees out of non-federal sources. In other words:
-- The district <u>may</u> pay retirement for state/local employees and school foods fund employees <u>only if</u> they also pay the health benefits, if any, using state/local funds, as shown in the chart below.

	State and Local (General Fund, etc.)	Federal Funds	Retirement Fund Allowable?
Employee A	Salary & Health Insurance		YES
Employee B	Salary	Health Insurance	No
Employee C		Salary & Health Insurance	No
Employee D	Health Insurance	Salary	No

Q: What is meant by “health-related benefits” under MCA 20-9-501(2)?
A: Health insurance premiums.

Q: Are worker’s compensation premiums considered “health related benefits” under MCA 20-9-501(2)?
A: No. The district may continue to pay Workers’ compensation for all employees using the general fund. Alternatively, the district may, but is not required to, use federal funds to pay a federally-paid employee’s workers’ compensation. SB 424 did not affect workers’ compensation.

<u>COOPERATIVES AND MEDICAID</u>

Q: The law allows cooperatives to use the retirement fund only for employees paid from the interlocal agreement fund. Does that mean the cooperative can’t use the retirement fund for employees paid using Medicaid funding in the co-op’s Miscellaneous Programs Fund (15)?
A: No. OPI interprets that a cooperative may use the retirement fund for employees they pay with Medicaid funds, which are state/local resources for this purpose, consistent with the school

districts' practice. OPI will propose legislation to address this inconsistency in the 2005 Legislature. (OPI issued a letter explaining this interpretation in April 2004. See http://www.opi.state.mt.us/Supt/NewsStories/043AE8D5D2.nclk)

IMPACT AID

Q: Can the district use the retirement fund for staff paid using the Impact Aid Fund?
A: No. Impact Aid is federal funding and must be used to pay retirement benefits for Impact Aid employees under SB 424.

Q: The Impact Aid Program held a hearing in March 2004 to consider whether SB 424 (MCA 20-9-501(2)) is consistent with Federal Impact Aid regulations. What impact does the hearing have on the requirements? On budgets for FY 2004-05?
A: At this point, none. The determination may be issued this Spring. However, according to the Federal Impact Aid Program staff, the effect of their determination would not have any immediate impact on SB 424's requirements in Montana state law. Depending on the outcome, an appeal process allows parties to address the issue with the U.S. Secretary of Education and then with the District Court. Until the appeals process is completed, it is advised that districts pay retirement for Impact Aid Fund employees as of FY 2004-05 using Impact Aid Funds, to avoid potential repayments.

Q: How can I learn more about the Impact Aid hearing issue?
A: The issue surrounds a federal regulation prohibiting a state from reducing state funding based on a district's Impact Aid funding. The state funding in question is the state guaranteed tax base aid for county retirement. OPI Contact: Tal Redpath, (406) 444-3024 or tredpath@state.mt.us.

MAINTENANCE OF EFFORT (MOE)

Q: Before SB 424, districts spent state/local retirement fund money for both their federal and state/local special education personnel. Districts cannot pay retirement for IDEA staff (i.e., federal special education salaries) using the retirement fund anymore. The total state/local special education expenditures will drop. How can a district avoid an MOE problem for the IDEA grant with falling state/local special ed costs?
A) Districts may need to take advantage of the waivers and reductions of MOE the IDEA program allows. The IDEA regulation 34 CFR 300.232 does allow for a decrease in expenditures below the level of those expenditures for the preceding fiscal year **if** the reduction is attributable to any of the following:

1) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel, who are replaced by qualified, lower-salaried staff;

2) A decrease in the enrollment of children with disabilities;

3) The termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child -

Has left the jurisdiction of the agency;

Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or

No longer needs the program of special education.

4) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

In addition to the above exceptions, in accord with 34 CFR 300.233(a)(1), an applicant is allowed to decrease expenditures for support of special education services to IDEA-eligible students with disabilities in an amount of 20 percent of the difference in its Part B allocation that exceeds the allocation amount it received under Part B of the Act for the previous fiscal year. By applying waivers and reductions in FY 2003-04, districts can possibly lessen the effect of the drastic drop between FY 2003-04 and FY 2004-05.

These reductions are discussed further in the April 28, 2003, OPI memo (see first paragraph of this letter for link).

BUDGETING SUGGESTIONS

Q: What pointers do you have for budgeting for FY 2004-05?
A: Consider these tips:

Health Insurance -- Consider whether to pay health insurance for federal staff from: (a) The General Fund; or (b) A federal program that pays their salaries. *OPI recommends charging health insurance proportionally to the funds that pay the salaries*. Note that federal regulations prohibit charging benefits to a federal program in excess of the person's time spent working on activities funded by the grant program. The federal project may be charged a part of the salaries and benefits that is less, but not more, than the portion of time the person works on grant activities.

Salaries Charged to the General Fund -- Consider whether a greater portion of salaries could be charged to the General Fund, freeing the federal grant for operating costs, within grant regulations and the district's approved grant applications. [Note that the district may need to submit a grant budget modification if the scope of the grant is significantly changed.]

Maintenance of Effort (MOE) for Title I and associated ESEA grants -- Not generally an issue, and will not likely be a problem under SB 424.

Maintenance of Effort (MOE) for IDEA Part B and Preschool grants – Use waivers and allowable reductions in FY 2003-04 as much as possible to lower the costs of retirement for FY 2003-04. That way, the reduction from FY 2003-04 to FY 2004-05, when retirement for IDEA program staff is completely absorbed by the grant and is no longer state and locally funded, will not be so drastic. For FY 2004-05, estimate the allowable reduction of 20% of the grant award increase from FY 2003-04 to FY 2004-05 to determine if your estimated FY 2004-05 state and local expenditures for special education will be adequate to avoid a MOE problem.

OPI CONTACTS:

Joan Anderson	406-444-1960	janderson@state.mt.us
Marilyn Pearson	406-444-4428	mpearson@state.mt.us

cc: Cathy Warhank, OPI Legal Counsel
Amy Carlson, Governor's Office

G:\2003leg\retirment under SB424_5_04Q&A.doc